

SENATE BILL No. 215

By Committee on Judiciary

2-2

AN ACT concerning driving under the influence of alcohol or drugs; criminal penalties; administrative procedures and penalties; amending K.S.A. 8-2,145 and K.S.A. 2000 Supp. 8-241, 8-1001, 8-1002, 8-1014, 8-1567, 21-4704, 22-3717 and 65-1,107 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2000 Supp. 8-241 is hereby amended to read as follows: 8-241. (a) Except as provided in K.S.A. 8-2,125 through 8-2,142, and amendments thereto, any person licensed to operate a motor vehicle in this state shall submit to an examination whenever: (1) The division of vehicles has good cause to believe that such person is incompetent or otherwise not qualified to be licensed; or (2) the division of vehicles has suspended such person's license pursuant to K.S.A. 8-1014, and amendments thereto, as the result of a test refusal, test failure or conviction for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of city ordinance or county resolution prohibiting the acts prohibited by K.S.A. 8-1567 and amendments thereto, except that no person shall have to submit to and successfully complete an examination more than once as the result of separate suspensions arising out of the same occurrence.

(b) When a person is required to submit to an examination pursuant to subsection (a)(1), the fee for such examination shall be in the amount provided by K.S.A. 8-240, and amendments thereto. When a person is required to submit to an examination pursuant to subsection (a)(2), the fee for such examination shall be \$5. In addition, any person required to submit to an examination pursuant to subsection (a)(2) shall be required, at the time of examination, to pay a reinstatement fee of ~~\$50~~ *\$200 after the first occurrence, \$400 after the second occurrence, \$600 after the third occurrence and \$800 after the fourth occurrence. No reinstatement shall be allowed after the fifth or subsequent occurrence.* All examination fees collected pursuant to this section shall be disposed of as provided in K.S.A. 8-267, and amendments thereto. All reinstatement fees collected pursuant to this section shall be remitted to the state treasurer, who shall deposit the entire amount in the state treasury and credit 50% to the community alcoholism and intoxication programs fund created pursuant

1 to K.S.A. 41-1126, and amendments thereto, 20% to the juvenile deten-
2 tion facilities fund created by K.S.A. 79-4803, and amendments thereto,
3 20% to the forensic laboratory and materials fee fund cited in K.S.A. 28-
4 176, and amendments thereto, and 10% to the driving under the influence
5 equipment fund created by K.S.A. 75-5660, *and amendments thereto*.
6 Moneys credited to the forensic laboratory and materials fee fund as pro-
7 vided herein shall be used to supplement existing appropriations and shall
8 not be used to supplant general fund appropriations to the Kansas bureau
9 of investigation.

10 (c) When an examination is required pursuant to subsection (a), at
11 least five days' written notice of the examination shall be given to the
12 licensee. The examination administered hereunder shall be at least equiv-
13 alent to the examination required by subsection (e) of K.S.A. 8-247, and
14 amendments thereto, with such additional tests as the division deems
15 necessary. Upon the conclusion of such examination, the division shall
16 take action as may be appropriate and may suspend or revoke the license
17 of such person or permit the licensee to retain such license, or may issue
18 a license subject to restrictions as permitted under K.S.A. 8-245, and
19 amendments thereto.

20 (d) Refusal or neglect of the licensee to submit to an examination as
21 required by this section shall be grounds for suspension or revocation of
22 the license.

23 Sec. 2. K.S.A. 8-2,145 is hereby amended to read as follows: 8-2,145.

24 (a) Prior to requesting a test or tests pursuant to K.S.A. 8-2,137, and
25 amendments thereto, in addition to any notices provided pursuant to ~~par-~~
26 ~~agraph (1) of subsection (f) of K.S.A. 8-1001,~~ and amendments thereto,
27 the following notice shall be provided orally and in writing: Whenever a
28 law enforcement officer has reasonable grounds to believe a person has
29 been driving a commercial motor vehicle while having alcohol or other
30 drugs in such person's system and the person refuses to submit to and
31 complete a test or tests requested by a law enforcement officer or submits
32 to and completes a test requested by a law enforcement officer which
33 determines that the person's alcohol concentration is .04 or greater, the
34 person will be disqualified from driving a commercial motor vehicle for
35 at least one year, pursuant to Kansas law.

36 (b) It shall not be a defense that the person did not understand the
37 notices required by this section.

38 (c) Upon completion of the notices set out in ~~paragraph (1) of sub-~~
39 ~~section (f) of K.S.A. 8-1001,~~ and amendments thereto, and the notices in
40 subsection (a), the law enforcement officer shall proceed to request a test
41 or tests. In addition to the completion of any certification required under
42 K.S.A. 8-1002, and amendments thereto, a law enforcement officer's cer-
43 tification shall be prepared and signed by one or more officers to certify:

1 (1) There existed reasonable grounds to believe the person had been
2 driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and
3 amendments thereto, while having alcohol or other drugs in such person's
4 system;

5 (2) the person had been placed under arrest, was in custody or had
6 been involved in a motor vehicle accident or collision;

7 (3) a law enforcement officer had presented the person with the no-
8 tices required by this section; and

9 (4) the person refused to submit to and complete a test or the test
10 result for alcohol content of blood or breath was .04 or greater.

11 (d) For purposes of this section, certification shall be complete upon
12 signing, and no additional acts of oath, affirmation, acknowledgment or
13 proof of execution shall be required. The signed certification or a copy
14 or photostatic reproduction thereof shall be admissible in evidence in all
15 proceedings brought pursuant to this act, and receipt of any such certi-
16 fication, copy or reproduction shall accord the division authority to pro-
17 ceed as set forth herein. Any person who signs a certification submitted
18 to the division knowing it contains a false statement is guilty of a class B
19 misdemeanor.

20 (e) Upon completing a certification under subsection (c), the officer
21 shall serve upon the person notice of disqualification of the privilege to
22 drive a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amend-
23 ments thereto, together with a copy of the certification. In cases where a
24 .04 or greater test result is established by a subsequent analysis of a breath
25 or blood sample, the officer shall serve notice of such suspension in per-
26 son or by another designated officer or by mailing the notice to the person
27 at the address provided at the time of the test. If the determination of a
28 test refusal or .04 or greater test result is made while the person is still
29 in custody, service shall be made in person by the officer on behalf of the
30 division of vehicles.

31 (f) The notice shall contain the following information:

32 (1) The person's name, driver's license number and current address
33 pursuant to K.S.A. 8-248, and amendments thereto;

34 (2) the reason and statutory grounds for the disqualification;

35 (3) the date notice is being served and the effective date of the dis-
36 qualification, which shall be the 20th day after the date of service;

37 (4) the right of the person to request an administrative hearing; and

38 (5) the procedure the person must follow to request an administrative
39 hearing. The notice of disqualification shall also inform the person that
40 all correspondence will be mailed to the person at the address contained
41 in the notice of disqualification unless the person notifies the division in
42 writing of a different address or change of address. The address provided
43 will be considered a change of address for purposes of K.S.A. 8-248, and

1 amendments thereto, if the address furnished is different from that on
2 file with the division.

3 (g) If the person mails a written request which is postmarked within
4 10 *calendar* days after service of the notice, if by personal service, or 13
5 *calendar* days after service, if by mail, the division shall schedule a hearing
6 in the county where the alleged violation occurred, or in a county adjacent
7 thereto. The licensee may request that subpoenas be issued in accordance
8 with the notice provided pursuant to subsection (d). Any request made
9 by the licensee to subpoena witnesses must be made in writing at the
10 time the hearing is requested and must include the name and current
11 address of such witness and, except for the certifying law enforcement
12 officer or officers, a statement of how the testimony of such witness is
13 relevant. Upon receiving a timely request for a hearing, the division shall
14 mail to the person notice of the time, date and place of hearing in ac-
15 cordance with subsection (i) and extend the person's temporary driving
16 privileges until the date set for the hearing by the division, unless oth-
17 erwise disqualified, suspended, revoked or canceled.

18 (h) The law enforcement officer shall forward the certification re-
19 quired under subsection (c) to the director within five days of the date
20 of certification. Upon receipt of the certification, the division shall review
21 the certification to determine that it meets the requirements of subsection
22 (c). Upon so determining, the director shall proceed to disqualify the
23 driver from driving a commercial motor vehicle in accordance with the
24 notice of disqualification previously served.

25 (i) All notices of disqualification under this section and all notices of
26 a hearing held under this section shall be sent by first-class mail and a
27 United States post office certificate of mailing shall be obtained therefor.
28 All notices so mailed shall be deemed received three days after mailing.

29 (j) Failure of a person to provide an adequate breath sample or sam-
30 ples as directed shall constitute a refusal unless the person shows that the
31 failure was due to physical inability caused by a medical condition unre-
32 lated to any ingested alcohol or drugs.

33 (k) The rules regarding evidence and procedure at hearings held un-
34 der ~~K.S.A. 8-1002~~ *section 5*, and amendments thereto, shall be applicable
35 to hearings held under this section. At the hearing on a disqualification
36 of commercial driving privileges, the issues shall be limited to those set
37 out in the certification.

38 (l) The division shall prepare and distribute forms for use by law
39 enforcement officers in giving the notice required by this section.

40 Sec. 3. K.S.A. 2000 Supp. 8-1001 is hereby amended to read as fol-
41 lows: 8-1001. (a) Any person who operates or attempts to operate a vehicle
42 within this state is deemed to have given consent, subject to the provisions
43 of this act, to submit to one or more tests of the person's blood, breath,

1 urine or other bodily substance to determine the presence of alcohol or
2 drugs. The testing deemed consented to herein shall include all quanti-
3 tative and qualitative tests for alcohol and drugs. A person who is dead
4 or unconscious shall be deemed not to have withdrawn the person's con-
5 sent to such test or tests, which shall be administered in the manner
6 provided by this section.

7 (b) A law enforcement officer shall request a person to submit to a
8 test or tests deemed consented to under subsection (a) if the officer has
9 reasonable grounds to believe the person was operating or attempting to
10 operate a vehicle while under the influence of alcohol or drugs, or both,
11 or to believe that the person was driving a commercial motor vehicle, as
12 defined in K.S.A. 8-2,128, and amendments thereto, *or was under the*
13 *age of 21 years* while having alcohol or other drugs in such person's sys-
14 tem; and one of the following conditions exists: (1) The person has been
15 arrested or otherwise taken into custody for any offense involving oper-
16 ation or attempted operation of a vehicle while under the influence of
17 alcohol or drugs, or both, *or for a violation of K.S.A. 8-1567a, and amend-*
18 *ments thereto*, or involving driving a commercial motor vehicle, as defined
19 in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
20 drugs in such person's system, in violation of a state statute or a city
21 ordinance; or (2) the person has been involved in a vehicle accident or
22 collision resulting in property damage, personal injury or death. The law
23 enforcement officer directing administration of the test or tests may act
24 on personal knowledge or on the basis of the collective information avail-
25 able to law enforcement officers involved in the accident investigation or
26 arrest.

27 (c) If a law enforcement officer requests a person to submit to a test
28 of blood under this section, the withdrawal of blood at the direction of
29 the officer may be performed only by: (1) A person licensed to practice
30 medicine and surgery or a person acting under the supervision of any
31 such licensed person; (2) a registered nurse or a licensed practical nurse;
32 or (3) any qualified medical technician, including, but not limited to, an
33 emergency medical technician-intermediate or mobile intensive care
34 technician, as those terms are defined in K.S.A. 65-6112, and amend-
35 ments thereto, or a phlebotomist. When presented with a written state-
36 ment by a law enforcement officer directing blood to be withdrawn from
37 a person who has tentatively agreed to allow the withdrawal of blood
38 under this section, the person authorized herein to withdraw blood and
39 the medical care facility where blood is withdrawn may rely on such a
40 statement as evidence that the person has consented to the medical pro-
41 cedure used and shall not require the person to sign any additional con-
42 sent or waiver form. In such a case, the person authorized to withdraw
43 blood and the medical care facility shall not be liable in any action alleging

1 lack of consent or lack of informed consent. No person authorized by this
2 subsection to withdraw blood, nor any person assisting in the performance
3 of a blood test nor any medical care facility where blood is withdrawn or
4 tested that has been directed by any law enforcement officer to withdraw
5 or test blood, shall be liable in any civil or criminal action when the act
6 is performed in a reasonable manner according to generally accepted
7 medical practices in the community where performed.

8 (d) If there are reasonable grounds to believe that there is impair-
9 ment by a drug which is not subject to detection by the blood or breath
10 test used, a urine test may be required. If a law enforcement officer
11 requests a person to submit to a test of urine under this section, the
12 collection of the urine sample shall be supervised by persons of the same
13 sex as the person being tested and shall be conducted out of the view of
14 any person other than the persons supervising the collection of the sample
15 and the person being tested, unless the right to privacy is waived by the
16 person being tested. The results of qualitative testing for drug presence
17 shall be admissible in evidence and questions of accuracy or reliability
18 shall go to the weight rather than the admissibility of the evidence.

19 (e) No law enforcement officer who is acting in accordance with this
20 section shall be liable in any civil or criminal proceeding involving the
21 action.

22 (f) ~~(1)~~ Before a test or tests are administered under this section, the
23 person shall be given oral and written notice that: (A) Kansas law requires
24 the person to submit to and complete one or more tests of breath, blood
25 or urine to determine if the person is under the influence of alcohol or
26 drugs, or both;

27 (B) the opportunity to consent to or refuse a test is not a constitu-
28 tional right;

29 (C) there is no constitutional right to consult with an attorney re-
30 garding whether to submit to testing;

31 (D) *if the person refuses to submit to and complete any breath, blood*
32 *or urine test when requested by a law enforcement officer, the person*
33 *shall be guilty of a class B misdemeanor;*

34 (E) *if the person refuses to submit to and complete any test of breath,*
35 *blood or urine hereafter requested by a law enforcement officer, the*
36 *person's driving privileges will be suspended for at least one year for the*
37 *first occurrence, two years for the second occurrence, three years for the*
38 *third occurrence, 10 years for the fourth occurrence and permanently*
39 *revoked for a fifth or subsequent offense;*

40 ~~(F)~~ (F) *if the person submits to and completes the test or tests and*
41 *the test results show an alcohol concentration of .08 or greater, the per-*
42 *son's driving privileges will be suspended for at least 30 days for the first*
43 *occurrence, one year for the second, third or fourth occurrence and per-*

1 ~~manently revoked for a fifth or subsequent offense; (F) if the person re-~~
2 ~~fuses a test or the test results show an alcohol concentration of .08 or~~
3 ~~greater and if, within the past five years, the person has been convicted~~
4 ~~or granted diversion on a charge of driving under the influence of alcohol~~
5 ~~or drugs, or both, or a related offense or has refused or failed a test, the~~
6 ~~person's driving privileges will be suspended for at least one year;~~

7 (G) if the person is less than 21 years of age at the time of the test
8 request and submits to and completes the tests and the test results show
9 an alcohol concentration of .08 or greater, the person's driving privileges
10 will be suspended up to one year;

11 (H) refusal to submit to testing may be used against the person at
12 any trial on a charge arising out of the operation or attempted operation
13 of a vehicle while under the influence of alcohol or drugs, or both;

14 (I) the results of the testing may be used against the person at any
15 trial on a charge arising out of the operation or attempted operation of a
16 vehicle while under the influence of alcohol or drugs, or both; and

17 (J) after the completion of the testing, the person has the right to
18 consult with an attorney and may secure additional testing, which, if de-
19 sired, should be done as soon as possible and is customarily available from
20 medical care facilities and physicians.

21 (g) If a law enforcement officer has reasonable grounds to believe
22 that the person has been driving a commercial motor vehicle, as defined
23 in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
24 drugs in such person's system, the person ~~must~~ shall also be provided the
25 oral and written notice pursuant to K.S.A. 8-2,145 and amendments
26 thereto. Any failure to give the notices required by K.S.A. 8-2,145 and
27 amendments thereto shall not invalidate any action taken as a result of
28 the requirements of this section. *If a law enforcement officer has reason-*
29 *able grounds to believe that the person has been driving or attempting to*
30 *drive a vehicle while having alcohol or other drugs in such person's system*
31 *and such person was under 21 years of age, the person also shall be given*
32 *the notices required by K.S.A. 8-1567a, and amendments thereto. Any*
33 *failure to give the notices required by K.S.A. 8-1567a, and amendments*
34 *thereto, shall not invalidate any action taken as a result of the require-*
35 *ments of this section.*

36 (h) After giving the foregoing information, a law enforcement officer
37 shall request the person to submit to testing. The selection of the test or
38 tests shall be made by the officer. If the person refuses to submit to and
39 complete a test as requested pursuant to this section, additional testing
40 shall not be given unless the certifying officer has probable cause to be-
41 lieve that the person, while under the influence of alcohol or drugs, or
42 both, has operated a vehicle in such a manner as to have caused the death
43 of or serious injury to another person. ~~As used in this section, the officer~~

1 shall have probable cause to believe that the person operated a vehicle
2 while under the influence of alcohol or drugs, or both, if the vehicle was
3 operated by such person in such a manner as to have caused the death
4 of or serious injury to another person. In such event, such test or tests
5 may be made pursuant to a search warrant issued under the authority of
6 K.S.A. 22-2502, and amendments thereto, or without a search warrant
7 under the authority of K.S.A. 22-2501, and amendments thereto. If the
8 test results show a blood or breath alcohol concentration of .08 or greater,
9 the person's driving privileges shall be subject to suspension, or suspen-
10 sion and restriction, as provided in K.S.A. 8-1002 and 8-1014, and amend-
11 ments thereto.

12 (i) The person's refusal shall be admissible in evidence against the
13 person at any trial on a charge arising out of the alleged operation or
14 attempted operation of a vehicle while under the influence of alcohol or
15 drugs, or both.

16 (j) If a law enforcement officer had reasonable grounds to believe the
17 person had been driving a commercial motor vehicle, as defined in K.S.A.
18 8-2,128, and amendments thereto, and the test results show a blood or
19 breath alcohol concentration of .04 or greater, the person shall be dis-
20 qualified from driving a commercial motor vehicle, pursuant to K.S.A. 8-
21 2,142, and amendments thereto. If a law enforcement officer had rea-
22 sonable grounds to believe the person had been driving a commercial
23 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,
24 and the test results show a blood or breath alcohol concentration of .08
25 or greater, or the person refuses a test, the person's driving privileges
26 shall be subject to suspension, or suspension and restriction, pursuant to
27 this section, in addition to being disqualified from driving a commercial
28 motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

29 (k) *An officer shall have probable cause to believe that the person*
30 *operated a vehicle while under the influence of alcohol or drugs, or both,*
31 *if the vehicle was operated by such person in such a manner as to have*
32 *caused the death of or serious injury to another person. In such event,*
33 *such test or tests may be made pursuant to a search warrant issued under*
34 *the authority of K.S.A. 22-2502, and amendments thereto, or without a*
35 *search warrant under the authority of K.S.A. 22-2501, and amendments*
36 *thereto.*

37 ~~(2)~~ (l) Failure of a person to provide an adequate breath sample or
38 samples as directed shall constitute a refusal unless the person shows that
39 the failure was due to physical inability caused by a medical condition
40 unrelated to any ingested alcohol or drugs.

41 ~~(3)~~ (m) It shall not be a defense that the person did not understand
42 the written or oral notice required by this section.

43 ~~(4)~~ (n) No test *results* shall be suppressed because of technical irreg-

1 ularities in the consent or notice *required* pursuant to ~~K.S.A. 8-2,145, and~~
2 ~~amendments thereto~~ *this act*.

3 ~~(g)~~ (o) Nothing in this section shall be construed to limit the admis-
4 sibility at any trial of alcohol or drug concentration testing results obtained
5 pursuant to a search warrant.

6 ~~(h)~~ (p) Upon the request of any person submitting to testing under
7 this section, a report of the results of the testing shall be made available
8 to such person.

9 ~~(i)~~ (q) This act is remedial law and shall be liberally construed to
10 promote public health, safety and welfare.

11 Sec. 4. K.S.A. 2000 Supp. 8-1002 is hereby amended to read as fol-
12 lows: 8-1002. (a) Whenever a test is requested pursuant to this act and
13 results in either a test failure or test refusal, a law enforcement officer's
14 certification shall be prepared. If the person had been driving a com-
15 mercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
16 thereto, a separate certification pursuant to K.S.A. 8-2,145 and amend-
17 ments thereto shall be prepared in addition to any certification required
18 by this section. The certification required by this section shall be signed
19 by one or more officers to certify:

20 (1) With regard to a test refusal, that: (A) There existed reasonable
21 grounds to believe the person was operating or attempting to operate a
22 vehicle while under the influence of alcohol or drugs, or both, or to be-
23 lieve that the person had been driving a commercial motor vehicle, as
24 defined in K.S.A. 8-2,128, and amendments thereto, *or is under 21 years*
25 *of age* while having alcohol or other drugs in such person's system; (B)
26 the person had been placed under arrest, was in custody or had been
27 involved in a vehicle accident or collision; (C) a law enforcement officer
28 had presented the person with the oral and written notice required by
29 K.S.A. 8-1001, and amendments thereto; and (D) the person refused to
30 submit to and complete a test as requested by a law enforcement officer.

31 (2) With regard to a test failure, that: (A) There existed reasonable
32 grounds to believe the person was operating a vehicle while under the
33 influence of alcohol or drugs, or both, or to believe that the person had
34 been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128,
35 and amendments thereto, *or is under 21 years of age* while having alcohol
36 or other drugs in such person's system; (B) the person had been placed
37 under arrest, was in custody or had been involved in a vehicle accident
38 or collision; (C) a law enforcement officer had presented the person with
39 the oral and written notice required by K.S.A. 8-1001, and amendments
40 thereto; and (D) the result of the test showed that the person had an
41 alcohol concentration of .08 or greater in such person's blood or breath.

42 (3) With regard to failure of a breath test, in addition to those matters
43 required to be certified under subsection (a)(2), that: (A) The testing

1 equipment used was certified by the Kansas department of health and
2 environment; (B) the testing procedures used were in accordance with
3 the requirements set out by the Kansas department of health and envi-
4 ronment; and (C) the person who operated the testing equipment was
5 certified by the Kansas department of health and environment to operate
6 such equipment.

7 (b) For purposes of this section, certification shall be complete upon
8 signing, and no additional acts of oath, affirmation, acknowledgment or
9 proof of execution shall be required. The signed certification or a copy
10 or photostatic reproduction thereof shall be admissible in evidence in all
11 proceedings brought pursuant to this act, and receipt of any such certi-
12 fication, copy or reproduction shall accord the department authority to
13 proceed as set forth herein. Any person who signs a certification submit-
14 ted to the division knowing it contains a false statement is guilty of a class
15 B nonperson misdemeanor.

16 (c) When the officer directing administration of the testing deter-
17 mines that a person has refused a test and the criteria of subsection (a)(1)
18 have been met or determines that a person has failed a test and the criteria
19 of subsection (a)(2) have been met, the officer shall serve upon the person
20 notice of suspension of driving privileges pursuant to K.S.A. 8-1014, and
21 amendments thereto. If the determination is made while the person is
22 still in custody, service shall be made in person by the officer on behalf
23 of the division of vehicles. In cases where a test failure is established by
24 a subsequent analysis of a breath, blood or urine sample, the officer shall
25 serve notice of such suspension in person or by another designated officer
26 or by mailing the notice to the person at the address provided at the time
27 of the test.

28 (d) In addition to the information required by subsection (a), the law
29 enforcement officer's certification and notice of suspension shall contain
30 the following information: (1) The person's name, driver's license number
31 and current address; (2) the reason and statutory grounds for the suspen-
32 sion; (3) the date notice is being served and a statement that the effective
33 date of the suspension shall be the 30th calendar day after the date of
34 service; (4) the right of the person to request an administrative hearing;
35 and (5) the procedure the person must follow to request an administrative
36 hearing. The law enforcement officer's certification and notice of suspen-
37 sion shall also inform the person that all correspondence will be mailed
38 to the person at the address contained in the law enforcement officer's
39 certification and notice of suspension unless the person notifies the di-
40 vision in writing of a different address or change of address. The address
41 provided will be considered a change of address for purposes of K.S.A.
42 8-248, and amendments thereto, if the address furnished is different from
43 that on file with the division.

1 (e) If a person refuses a test or if a person is still in custody when it
2 is determined that the person has failed a test, the officer shall take any
3 license in the possession of the person and, if the license is not expired,
4 suspended, revoked or canceled, shall issue a temporary license effective
5 until the 30th calendar day after the date of service set out in the law
6 enforcement officer's certification and notice of suspension. If the test
7 failure is established by a subsequent analysis of a breath or blood sample,
8 the temporary license shall be served together with the copy of the law
9 enforcement officer's certification and notice of suspension. A temporary
10 license issued pursuant to this subsection shall bear the same restrictions
11 and limitations as the license for which it was exchanged. Within five days
12 after the date of service of a copy of the law enforcement officer's certi-
13 fication and notice of suspension the officer's certification and notice of
14 suspension, along with any licenses taken, shall be forwarded to the
15 division.

16 (f) Upon receipt of the law enforcement officer's certification, the
17 division shall review the certification to determine that it meets the
18 requirements of subsection (a). Upon so determining, the division shall
19 proceed to suspend the person's driving privileges in accordance with the
20 notice of suspension previously served. If the requirements of subsection
21 (a) are not met, the division shall dismiss the administrative proceeding
22 and return any license surrendered by the person.

23 ~~(g) If the person mails a written request which is postmarked within
24 10 days after service of the notice, if by personal service, or 13 days after
25 service, if by mail, the division shall schedule a hearing in the county
26 where the alleged violation occurred, or in a county adjacent thereto. The
27 licensee may request that subpoenas be issued in accordance with the
28 notice provided pursuant to subsection (d). Any request made by the
29 licensee to subpoena witnesses must be made in writing at the time the
30 hearing is requested and must include the name and current address of
31 such witnesses and, except for the law enforcement officer or officers
32 certifying refusal or failure, a statement of how the testimony of such
33 witness is relevant. Upon receiving a timely request for a hearing, the
34 division shall mail to the person notice of the time, date and place of
35 hearing in accordance with subsection (l) and extend the person's tem-
36 porary driving privileges until the date set for the hearing by the division.~~

37 ~~—(h) (1) If the officer certifies that the person refused the test, the
38 scope of the hearing shall be limited to whether: (A) A law enforcement
39 officer had reasonable grounds to believe the person was operating or
40 attempting to operate a vehicle while under the influence of alcohol or
41 drugs, or both, or to believe that the person had been driving a com-
42 mercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
43 thereto, while having alcohol or other drugs in such person's system; (B)~~

1 the person was in custody or arrested for an alcohol or drug related of-
2 fense or was involved in a vehicle accident or collision resulting in prop-
3 erty damage, personal injury or death; (C) a law enforcement officer had
4 presented the person with the oral and written notice required by K.S.A.
5 8-1001, and amendments thereto; and (D) the person refused to submit
6 to and complete a test as requested by a law enforcement officer.

7 —(2) If the officer certifies that the person failed the test, the scope of
8 the hearing shall be limited to whether: (A) A law enforcement officer
9 had reasonable grounds to believe the person was operating a vehicle
10 while under the influence of alcohol or drugs, or both, or to believe that
11 the person had been driving a commercial motor vehicle, as defined in
12 K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
13 drugs in such person's system; (B) the person was in custody or arrested
14 for an alcohol or drug related offense or was involved in a vehicle accident
15 or collision resulting in property damage, personal injury or death; (C) a
16 law enforcement officer had presented the person with the oral and writ-
17 ten notice required by K.S.A. 8-1001, and amendments thereto; (D) the
18 testing equipment used was reliable; (E) the person who operated the
19 testing equipment was qualified; (F) the testing procedures used were
20 reliable; (G) the test result determined that the person had an alcohol
21 concentration of .08 or greater in such person's blood or breath; and (H)
22 the person was operating a vehicle.

23 —(i) At a hearing pursuant to this section, or upon court review of an
24 order entered at such a hearing, an affidavit of the custodian of records
25 at the Kansas department of health and environment stating that the
26 breath testing device was certified and the operator of such device was
27 certified on the date of the test shall be admissible into evidence in the
28 same manner and with the same force and effect as if the certifying officer
29 or employee of the Kansas department of health and environment had
30 testified in person. Such affidavit shall be admitted to prove such reli-
31 ability without further foundation requirement. A certified operator of a
32 breath testing device shall be competent to testify regarding the proper
33 procedures to be used in conducting the test.

34 —(j) At a hearing pursuant to this section, or upon court review of an
35 order entered at such hearing, in which the report of blood test results
36 have been prepared by the Kansas bureau of investigation or other fo-
37 rensic laboratory of a state or local law enforcement agency are to be
38 introduced as evidence, the report, or a copy of the report, of the findings
39 of the forensic examiner shall be admissible into evidence in the same
40 manner and with the same force and effect as if the forensic examiner
41 who performed such examination, analysis, comparison or identification
42 and prepared the report thereon had testified in person.

43 —(k) If no timely request for hearing is made, the suspension period

1 imposed pursuant to this section shall begin upon the expiration of the
2 temporary license granted under subsection (c). If a timely request for
3 hearing is made, the hearing shall be held within 30 days of the date the
4 request for hearing is received by the division, except that failure to hold
5 such hearing within 30 days shall not be cause for dismissal absent a
6 showing of prejudice. At the hearing, the director or the representative
7 of the director, shall either affirm the order of suspension or suspension
8 and restriction or dismiss the administrative action. If the division is un-
9 able to hold a hearing within 30 days of the date upon which the request
10 for hearing is received, the division shall extend the person's temporary
11 driving privileges until the date set for the hearing by the division. No
12 extension of temporary driving privileges shall be issued for continuances
13 requested by or on behalf of the licensee. If the person whose privileges
14 are suspended is a nonresident licensee, the license of the person shall
15 be forwarded to the appropriate licensing authority in the person's state
16 of residence if the result at the hearing is adverse to such person or if no
17 timely request for a hearing is received.

18 ~~—(l) All notices affirming or canceling a suspension under this section,
19 all notices of a hearing held under this section and all issuances of tem-
20 porary driving privileges pursuant to subsection (k) shall be sent by first-
21 class mail and a U.S. post office certificate of mailing shall be obtained
22 therefor. All notices so mailed shall be deemed received three days after
23 mailing.~~

24 ~~—(m) (g) The division shall prepare and distribute forms for use by law
25 enforcement officers in giving the notice required by this section.~~

26 ~~(n) This section and the applicable provisions contained in subsec-
27 tions (d) and (e) of K.S.A. 8-255 and amendments thereto constitute the
28 administrative procedures to be used for all administrative hearings held
29 under this act. To the extent that this section and any other provision of
30 law conflicts, this section prevails.~~

31 ~~—(o) (h) The provisions of K.S.A. 60-206 and amendments thereto re-
32 garding the computation of time shall not be applicable in determining
33 the effective date of suspension set out in subsection (d) or the time for
34 requesting an administrative hearing set out in subsection (g). "Calendar
35 day" when used in this section shall mean that every day shall be included
36 in computations of time whether a week day, Saturday, Sunday or holiday.~~

37 New Sec. 5. (a) Any licensee served with an officer's certification and
38 notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto,
39 may request an administrative hearing. Such request may be made either
40 by:

41 (1) Mailing a written request which is postmarked 10 calendar days
42 after service of notice, if such notice was given by personal service;

43 (2) mailing a written request which is postmarked 13 calendar days

1 after service of notice, if such notice was given by mail;

2 (3) transmitting a written request by electronic facsimile which is re-
3 ceived by the division within 10 calendar days after service of the notice,
4 if such notice was given by personal service; or

5 (4) transmitting a written request by electronic facsimile which is re-
6 ceived by the division within 13 calendar days after service, if such notice
7 was given by mail.

8 (b) If the licensee makes a timely request for an administrative hear-
9 ing, any temporary license issued pursuant to K.S.A. 8-1002, and amend-
10 ments thereto, shall remain in effect until the 30th calendar day after the
11 effective date of the decision made by the division.

12 (c) If the licensee fails to make a timely request for an administrative
13 hearing, the licensee's driving privileges shall be suspended or suspended
14 and then restricted in accordance with the notice of suspension served
15 pursuant to K.S.A. 8-1002, and amendments thereto.

16 (d) Upon receipt of a timely request for a hearing, the division shall
17 immediately set the matter for hearing before a representative of the
18 director and provide notice of the extension of temporary driving privi-
19 leges. The hearing shall be conducted in the county where the arrest
20 occurred or a county adjacent thereto. At the discretion of the division,
21 the hearing may be conducted by telephone or video conference call.

22 (e) Except as provided in subsection (f), prehearing discovery shall
23 be limited to the following documents, which shall be provided to the
24 licensee or the licensee's attorney no later than five calendar days prior
25 to the date of the hearing:

26 (1) The officer's certification and notice of suspension;

27 (2) in the case of a breath or blood test failure, copies of documents
28 indicating the result of any evidentiary breath or blood test administered
29 at the request of a law enforcement officer;

30 (3) in the case of a breath test failure, a copy of the affidavit showing
31 certification of the officer and the instrument; and

32 (4) in the case of a breath test failure, a copy of the Kansas depart-
33 ment of health and environment testing protocol checklist.

34 (f) At or prior to the time the notice of hearing is sent, the division
35 shall issue an order allowing the licensee or the licensee's attorney to
36 review any video or audio tape record made of the events upon which
37 the administrative action is based. Such review shall take place at a rea-
38 sonable time designated by the law enforcement agency and shall be
39 made at the location where the video or audio tape is kept. The licensee
40 may obtain a copy of any such video or audio tape upon request and upon
41 payment of a reasonable fee to the law enforcement agency, not to exceed
42 \$25 per tape.

43 (g) Witnesses at the hearing shall be limited to the licensee and to

1 any law enforcement officer who signed the certification form. The pres-
2 ence of the certifying officer or officers shall not be required, unless
3 requested by the licensee at the time of making the request for the hear-
4 ing. The examination of a law enforcement officer shall be restricted to
5 the factual circumstances relied upon in the officer's certification. At the
6 time the licensee requests the division to subpoena a law enforcement
7 officer to attend the administrative hearing, whether in person or by tel-
8 ephone or video conference, the licensee shall pay a fee by check or
9 money order in the amount of \$50. Such check or money order shall be
10 payable to the order of the law enforcement agency which employs the
11 officer and shall be transmitted by the division to such law enforcement
12 agency together with the subpoena.

13 (h) (1) If the officer certifies that the person refused the test, the
14 scope of the hearing shall be limited to whether:

15 (A) A law enforcement officer had reasonable grounds to believe the
16 person was operating or attempting to operate a vehicle while under the
17 influence of alcohol or drugs, or both, or had been driving a commercial
18 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,
19 while having alcohol or other drugs in such person's system;

20 (B) the person was in custody or arrested for an alcohol or drug re-
21 lated offense or was involved in a vehicle accident or collision resulting
22 in property damage, personal injury or death;

23 (C) a law enforcement officer had presented the person with the oral
24 and written notice required by K.S.A. 8-1001, and amendments thereto;
25 and

26 (D) the person refused to submit to and complete a test as requested
27 by a law enforcement officer.

28 (2) If the officer certifies that the person failed a breath test, the
29 scope of the hearing shall be limited to whether:

30 (A) A law enforcement officer had reasonable grounds to believe the
31 person was operating a vehicle while under the influence of alcohol or
32 drugs, or both, or had been driving a commercial motor vehicle, as de-
33 fined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
34 or other drugs in such person's system;

35 (B) the person was in custody or arrested for an alcohol or drug re-
36 lated offense or was involved in a vehicle accident or collision resulting
37 in property damage, person injury or death;

38 (C) a law enforcement officer had presented the person with the oral
39 and written notice required by K.S.A. 8-1001, and amendments thereto;

40 (D) the testing equipment used was certified by the Kansas depart-
41 ment of health and environment;

42 (E) the person who operated the testing equipment was certified by
43 the Kansas department of health and environment;

1 (F) the testing procedures used substantially complied with the pro-
2 cedures set out by the Kansas department of health and environment;

3 (G) the test result determined that the person had an alcohol con-
4 centration of .08 or greater in such person's breath; and

5 (H) the person was operating or attempting to operate a vehicle.

6 (3) If the officer certifies that the person failed a blood test, the scope
7 of the hearing shall be limited to whether:

8 (A) a law enforcement officer had reasonable grounds to believe the
9 person was operating a vehicle while under the influence of alcohol or
10 drugs, or both, or had been driving a commercial motor vehicle, as de-
11 fined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
12 or other drugs in such person's system;

13 (B) the person was in custody or arrested for an alcohol or drug re-
14 lated offense or was involved in a vehicle accident or collision resulting
15 in property damage, personal injury or death;

16 (C) a law enforcement officer had presented the person with the oral
17 and written notice required by K.S.A. 8-1001, and amendments thereto;

18 (D) the testing equipment used was reliable;

19 (E) the person who operated the testing equipment was qualified;

20 (F) the testing procedures used were reliable;

21 (G) the test result determined that the person had an alcohol con-
22 centration of .08 or greater in such person's blood; and

23 (H) the person was operating or attempting to operate a vehicle.

24 (i) At a hearing pursuant to this section, or upon court review of an
25 order entered at such a hearing, an affidavit of the custodian of records
26 at the Kansas department of health and environment stating that the
27 breath testing device was certified and the operator of such device was
28 certified on the date of the test shall be admissible into evidence in the
29 same manner and with the same force and effect as if the certifying officer
30 or employee of the Kansas department of health and environment had
31 testified in person. A certified operator of a breath testing device shall be
32 competent to testify regarding the property procedures to be used in
33 conducting the test.

34 (j) At a hearing pursuant to this section, or upon court review of an
35 order entered at such hearing, in which the report of blood test results
36 have been prepared by the Kansas bureau of investigation or other fo-
37 rensic laboratory of a state or local law enforcement agency are to be
38 introduced as evidence, the report, or a copy of the report, of the findings
39 of the forensic examiner shall be admissible into evidence in the same
40 manner and with the same force and effect as if the forensic examiner
41 who performed such examination, analysis, comparison or identification
42 and prepared the report thereon had testified in person.

43 (k) At the hearing, the licensee has the burden of proof by a prepon-

1 derance of the evidence to show that the facts set out in the officer's
2 certification are false or insufficient and that the order suspending or
3 suspending and restricting the licensee's driving privileges should be
4 dismissed.

5 (l) Evidence at the hearing shall be limited to the following:

6 (1) The documents set out in paragraph (e) of this section;

7 (2) the testimony of the licensee;

8 (3) the testimony of any certifying officer;

9 (4) any affidavits submitted from other witnesses;

10 (5) any documents submitted by the licensee to show the existence
11 of a medical condition, as described in K.S.A. 8-1001, and amendments
12 thereto; and

13 (6) any video or audio tape record of the events upon which the ad-
14 ministrative action is based.

15 (m) After the hearing, the representative of the director shall enter
16 an order affirming the order of suspension or suspension and restriction
17 of driving privileges or for good cause appearing therefor, dismiss the
18 administrative action. If the representative of the director enters an order
19 affirming the order of suspension or suspension and restriction of driving
20 privileges, the suspension or suspension and restriction shall begin on the
21 30th day after the effective date of the order of suspension or suspension
22 and restriction. If the person whose privileges are suspended is a non-
23 resident licensee, the license of the person shall be forwarded to the
24 appropriate licensing authority in the person's state of residence if the
25 result at the hearing is adverse to such person or if no timely request for
26 a hearing is received.

27 (n) The representative of the director may issue an order at the close
28 of the hearing or may take the matter under advisement and issue a
29 hearing order at a later date. If the order is made at the close of the
30 hearing, the licensee or the licensee's attorney shall be served with a copy
31 of the order by the representative of the director. If the matter is taken
32 under advisement or if the hearing was by telephone or video conference
33 call, the licensee and any attorney who appeared at the administrative
34 hearing upon behalf of the licensee each shall be served with a copy of
35 the hearing order by mail. Any law enforcement officer who appeared at
36 the hearing also may be mailed a copy of the hearing order. The effective
37 date of the hearing order shall be the date upon which the hearing order
38 is served, whether served in person or by mail.

39 (o) The licensee may file a petition for review of the hearing order
40 pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition
41 for review, the licensee shall serve the secretary of revenue with a copy
42 of the petition and summons. Upon receipt of a copy of the petition for
43 review by the secretary, the temporary license issued pursuant to para-

1 graph (b) of this section shall be extended until the decision on the pe-
2 tition for review is final.

3 (p) Such review shall be in accordance with this section and the act
4 for judicial review and civil enforcement of agency actions. To the extent
5 that this section and any other provision of law conflicts, this section shall
6 prevail. The petition for review shall be filed within 10 days after the
7 effective date of the order. Venue of the action for review is the county
8 where the person was arrested or the accident occurred, or, if the hearing
9 was not conducted by telephone conference call, the county where the
10 administrative proceeding was held. The action for review shall be by trial
11 de novo to the court. The court shall take testimony, examine the facts
12 of the case and determine whether the petitioner is entitled to driving
13 privileges or whether the petitioner's driving privileges are subject to
14 suspension or suspension and restriction under the provisions of this act.
15 If the court finds that the grounds for action by the agency have been
16 met, the court shall affirm the agency action.

17 (q) Upon review, the licensee shall have the burden to show that the
18 decision of the agency should be set aside. To be raised upon review, an
19 issue shall have been raised at the administrative hearing and also shall
20 be set out in the petition for review. The court is not limited to any
21 evidentiary record created during the administrative hearing and may
22 accept additional evidence on the issues preserved for review. Except as
23 otherwise provided in this section, the court shall not rely upon evidence
24 contained in the record of the administrative proceeding below, absent
25 compliance upon review with the rules of evidence in a civil proceeding.

26 (r) Notwithstanding the requirement to issue a temporary license in
27 K.S.A. 8-1002, and amendments thereto, and the requirements to extend
28 the temporary license in this section, any such temporary driving privi-
29 leges are subject to restriction, suspension, revocation or cancellation as
30 provided in K.S.A. 8-1014, and amendments thereto, or for other cause.

31 (s) Upon motion by a party, or on the court's own motion, the court
32 may enter an order restricting the driving privileges allowed by the tem-
33 porary license provided for in K.S.A. 8-1002, and amendments thereto,
34 and in this section. The temporary license also shall be subject to restric-
35 tion, suspension, revocation or cancellation, as set out in K.S.A. 8-1014,
36 and amendments thereto, or for other cause.

37 (t) The facts found by the hearing officer or by the district court upon
38 a petition for review shall be independent of the determination of the
39 same or similar facts in the adjudication of any criminal charges arising
40 out of the same occurrence. The disposition of those criminal charges
41 shall not affect the suspension or suspension and restriction to be imposed
42 under this section.

43 (u) All notices affirming or canceling a suspension under this section,

1 all notices of a hearing held under this section and all issuances of tem-
2 porary driving privileges pursuant to this section shall be sent by first-
3 class mail and a United States post office certificate of mailing shall be
4 obtained therefor. All notices so mailed shall be deemed received three
5 days after mailing.

6 (v) The provisions of K.S.A. 60-206, and amendments thereto, re-
7 garding the computation of time shall not be applicable in determining
8 the time for requesting an administrative hearing as set out in subsection
9 (a) but shall apply to the time for filing a petition for review pursuant to
10 subsection (o) and K.S.A. 8-259, and amendments thereto. "Calendar
11 day" shall mean that every day shall be included in computations of time
12 whether a week day, Saturday, Sunday or holiday.

13 New Sec. 6. Refusal to submit to a request by a law enforcement
14 officer to submit to a breath, blood or urine test pursuant to K.S.A. 8-
15 1001 or 8-1002, and amendments thereto, shall be a class B misdemeanor.

16 Sec. 7. K.S.A. 2000 Supp. 8-1014 is hereby amended to read as fol-
17 lows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-2,142,
18 and amendments thereto, if a person refuses a test, the division, pursuant
19 to K.S.A. 8-1002, and amendments thereto, shall ~~suspend the person's~~
20 ~~driving privileges for one year.~~

21 (1) *On the person's first occurrence, suspend the person's driving*
22 *privileges for one year;*

23 (2) *on the person's second occurrence, suspend the person's driving*
24 *privileges for two years;*

25 (3) *on the person's third occurrence, suspend the person's driving*
26 *privileges for three years;*

27 (4) *on the person's fourth occurrence, suspend the person's driving*
28 *privileges for 10 years; and*

29 (5) *on the person's fifth or subsequent occurrence, revoke the person's*
30 *driving privileges permanently.*

31 (b) Except as provided by subsections (c) and (e) and K.S.A. 8-2,142,
32 and amendments thereto, if a person fails a test or has an alcohol or drug-
33 related conviction in this state, the division shall:

34 (1) On the person's first occurrence, suspend the person's driving
35 privileges for 30 days, then restrict the person's driving privileges as pro-
36 vided by K.S.A. 8-1015, and amendments thereto, for an additional 330
37 days; ~~and~~

38 (2) ~~on the person's second or a subsequent, third or fourth occur-~~
39 ~~rence, suspend the person's driving privileges for one year; and~~

40 (3) *on the person's fifth or subsequent occurrence, the person's driv-*
41 *ing privileges shall be permanently revoked.*

42 (c) Except as provided by subsection (e) and K.S.A. 8-2,142, and
43 amendments thereto, if a person who is less than 21 years of age fails a

1 test or has an alcohol or drug-related conviction in this state, the division
2 shall:

- 3 (1) Suspend the person's driving privileges for one year; or
4 (2) if such person has entered a diversion agreement under K.S.A.
5 12-4412 *et seq.*, and amendments thereto, or K.S.A. 22-2906 *et seq.*, and
6 amendments thereto, suspend the person's driving privileges for the term
7 of such diversion agreement.

8 (d) Whenever the division is notified by an alcohol and drug safety
9 action program that a person has failed to complete any alcohol and drug
10 safety action education or treatment program ordered by a court for a
11 conviction of a violation of K.S.A. 8-1567, and amendments thereto, the
12 division shall suspend the person's driving privileges until the division
13 receives notice of the person's completion of such program.

14 (e) Except as provided in K.S.A. 8-2,142, and amendments thereto,
15 if a person's driving privileges are subject to suspension pursuant to this
16 section for a test refusal, test failure or alcohol or drug-related conviction
17 arising from the same arrest, the period of such suspension shall not
18 exceed the longest applicable period authorized by subsection (a), (b) or
19 (c), and such suspension periods shall not be added together or otherwise
20 imposed consecutively. In addition, in determining the period of such
21 suspension as authorized by subsection (a), (b) or (c), such person shall
22 receive credit for any period of time for which such person's driving
23 privileges were suspended while awaiting any hearing or final order au-
24 thorized by this act.

25 If a person's driving privileges are subject to restriction pursuant to
26 this section for a test failure or alcohol or drug-related conviction arising
27 from the same arrest, the restriction periods shall not be added together
28 or otherwise imposed consecutively. In addition, in determining the pe-
29 riod of restriction, the person shall receive credit for any period of sus-
30 pension imposed for a test refusal arising from the same arrest.

31 (f) If the division has taken action under subsection (a) for a test
32 refusal or under subsection (b) or (c) for a test failure and such action is
33 stayed pursuant to K.S.A. 8-259, and amendments thereto, or if tempo-
34 rary driving privileges are issued pursuant to ~~subsection (k) of K.S.A. 8-~~
35 ~~1002~~ section 5, and amendments thereto, the stay or temporary driving
36 privileges shall not prevent the division from taking the action required
37 by subsection (b) or (c) for an alcohol or drug-related conviction.

38 (g) Upon restricting a person's driving privileges pursuant to this sec-
39 tion, the division shall issue without charge a driver's license which shall
40 indicate on the face of the license that restrictions have been imposed on
41 the person's driving privileges and that a copy of the order imposing the
42 restrictions is required to be carried by the person for whom the license
43 was issued any time the person is operating a motor vehicle on the high-

1 ways of this state.

2 Sec. 8. K.S.A. 2000 Supp. 8-1567 is hereby amended to read as fol-
3 lows: 8-1567. (a) No person shall operate or attempt to operate any vehicle
4 within this state while:

5 (1) The alcohol concentration in the person's blood or breath as
6 shown by any competent evidence, including other competent evidence,
7 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-
8 ments thereto, is .08 or more;

9 (2) the alcohol concentration in the person's blood or breath, as meas-
10 ured within two hours of the time of operating or attempting to operate
11 a vehicle, is .08 or more;

12 (3) under the influence of alcohol to a degree that renders the person
13 incapable of safely driving a vehicle;

14 (4) under the influence of any drug or combination of drugs to a
15 degree that renders the person incapable of safely driving a vehicle; or

16 (5) under the influence of a combination of alcohol and any drug or
17 drugs to a degree that renders the person incapable of safely driving a
18 vehicle.

19 (b) No person shall operate or attempt to operate any vehicle within
20 this state if the person is a habitual user of any narcotic, hypnotic, som-
21 nifacient or stimulating drug.

22 (c) If a person is charged with a violation of this section involving
23 drugs, the fact that the person is or has been entitled to use the drug
24 under the laws of this state shall not constitute a defense against the
25 charge.

26 (d) Upon a first conviction of a violation of this section, a person shall
27 be guilty of a class B, nonperson misdemeanor and sentenced to not less
28 than 48 consecutive hours nor more than six months' imprisonment, or
29 in the court's discretion 100 hours of public service, and fined not less
30 than ~~\$200~~ \$500 nor more than ~~\$500~~ \$1,000. The person convicted must
31 serve at least 48 consecutive hours' imprisonment or 100 hours of public
32 service either before or as a condition of any grant of probation or sus-
33 pension, reduction of sentence or parole. In addition, the court shall enter
34 an order which requires that the person enroll in and successfully com-
35 plete an alcohol and drug safety action education program or treatment
36 program as provided in K.S.A. 8-1008, and amendments thereto, or both
37 the education and treatment programs.

38 (e) On a second conviction of a violation of this section, a person shall
39 be guilty of a class A, nonperson misdemeanor and sentenced to not less
40 than 90 days nor more than one year's imprisonment and fined not less
41 than ~~\$500~~ \$1,000 nor more than \$1,000. ~~The five days' imprisonment~~
42 ~~mandated by this subsection may be served in a work release program~~
43 ~~only after such person has served 48 consecutive hours' imprisonment,~~

1 ~~provided such work release program requires such person to return to~~
2 ~~confinement at the end of each day in the work release program. Except~~
3 ~~as provided in subsection (g), \$1,500. The person convicted must serve~~
4 ~~at least five 10 consecutive days' imprisonment before the person is~~
5 ~~granted probation, suspension or reduction of sentence or parole or is~~
6 ~~otherwise released. After 10 consecutive days have been served, the court~~
7 ~~may place the person convicted under a work release program provided~~
8 ~~such work release program requires such person to return to confinement~~
9 ~~at the end of each day in the work release program or under a house~~
10 ~~arrest program, pursuant to K.S.A. 21-4603b, and amendments thereto,~~
11 ~~to serve the remainder of the sentence. As a condition of any grant of~~
12 ~~probation, suspension of sentence or parole or of any other release, the~~
13 ~~person shall be required to enter into and complete a an inpatient or~~
14 ~~outpatient treatment program for alcohol and drug abuse as provided in~~
15 ~~K.S.A. 8-1008, and amendments thereto. An alcohol and drug safety ac-~~
16 ~~tion education program shall not qualify as a treatment program under~~
17 ~~this subsection.~~

18 (f) ~~On the third or a subsequent conviction of a violation of this sec-~~
19 ~~tion, a person shall be guilty of a nonperson felony and sentenced to not~~
20 ~~less than 90 120 days nor more than one year's imprisonment and fined~~
21 ~~not less than \$1,000 \$1,500 nor more than \$2,500. Except as provided in~~
22 ~~subsection (g), The person convicted shall not be eligible for release on~~
23 ~~probation, suspension or reduction of sentence or parole until the person~~
24 ~~has served at least 90 120 days' imprisonment. The court may also require~~
25 ~~as a condition of parole that such person After 120 consecutive days have~~
26 ~~been served, the court may place the person convicted under a work re-~~
27 ~~lease program provided such work release program requires such person~~
28 ~~to return to confinement at the end of each day in the work release pro-~~
29 ~~gram or under a house arrest program, pursuant to K.S.A. 21-4603b, and~~
30 ~~amendments thereto, to serve the remainder of the sentence. As a condi-~~
31 ~~tion of any grant of probation, suspension of sentence or parole or any~~
32 ~~other release, the person shall be required to enter into and complete a~~
33 ~~an inpatient or outpatient treatment program for alcohol and drug abuse~~
34 ~~as provided by K.S.A. 8-1008, and amendments thereto. The 90 days'~~
35 ~~imprisonment mandated by this subsection may be served in a work re-~~
36 ~~lease program only after such person has served 48 consecutive hours'~~
37 ~~imprisonment, provided such work release program requires such person~~
38 ~~to return to confinement at the end of each day in the work release~~
39 ~~program. An alcohol and drug safety action education program shall not~~
40 ~~qualify as a treatment program under this section.~~

41 (g) ~~On a second or subsequent conviction of a violation of this section,~~
42 ~~the court may place the person convicted under a house arrest program,~~
43 ~~pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the re-~~

1 ~~remainder of the minimum sentence only after such person has served 48~~
2 ~~consecutive hours' imprisonment. On the fourth or subsequent conviction~~
3 ~~of a violation of this section, a person shall be guilty of a nonperson felony~~
4 ~~and sentenced to 15 months' imprisonment and fined \$2,500. The person~~
5 ~~convicted shall not be eligible for parole or reduction of sentence. During~~
6 ~~the term of imprisonment the person shall be required to participate in a~~
7 ~~treatment program for alcohol and drug abuse. Upon completion of the~~
8 ~~mandatory term of imprisonment the person shall be released to a man-~~
9 ~~datory one year period of postrelease supervision. During postrelease su-~~
10 ~~per vision the person shall be required to participate in an approved af-~~
11 ~~tercare plan as a condition of release.~~

12 *(h) Any person convicted of violating this section or an ordinance*
13 *which prohibits the acts that this section prohibits who had a child under*
14 *the age of 14 years in the vehicle at the time of the offense shall have such*
15 *person's punishment enhanced by one month of imprisonment. This im-*
16 *prisonment must be served consecutively to any other penalty imposed*
17 *for a violation of this section or an ordinance which prohibits the acts*
18 *that this section prohibits. During the service of the one month enhanced*
19 *penalty, the person shall not be eligible for house arrest, work release or*
20 *other conditional release.*

21 ~~(i)~~ *(i)* The court may establish the terms and time for payment of
22 any fines, fees, assessments and costs imposed pursuant to this section.
23 Any assessment and costs shall be required to be paid not later than 90
24 days after imposed, and any remainder of the fine shall be paid prior to
25 the final release of the defendant by the court.

26 ~~(j)~~ *(j)* In lieu of payment of a fine imposed pursuant to this section,
27 the court may order that the person perform community service specified
28 by the court. The person shall receive a credit on the fine imposed in an
29 amount equal to \$5 for each full hour spent by the person in the specified
30 community service. The community service ordered by the court shall be
31 required to be performed not later than one year after the fine is imposed
32 or by an earlier date specified by the court. If by the required date the
33 person performs an insufficient amount of community service to reduce
34 to zero the portion of the fine required to be paid by the person, the
35 remaining balance of the fine shall become due on that date.

36 ~~(k)~~ *(k)* The court shall report every conviction of a violation of this
37 section and every diversion agreement entered into in lieu of further
38 criminal proceedings or a complaint alleging a violation of this section to
39 the division. Prior to sentencing under the provisions of this section, the
40 court shall request and shall receive from the division a record of all prior
41 convictions obtained against such person for any violations of any of the
42 motor vehicle laws of this state.

43 ~~(l)~~ *(l)* For the purpose of determining whether a conviction is a first,

1 second, third, *fourth* or subsequent conviction in sentencing under this
2 section:

3 (1) “Conviction” includes being convicted of a violation of this section
4 or entering into a diversion agreement in lieu of further criminal pro-
5 ceedings on a complaint alleging a violation of this section;

6 (2) “conviction” includes being convicted of a violation of a law of
7 another state or an ordinance of any city, or resolution of any county,
8 which prohibits the acts that this section prohibits or entering into a di-
9 version agreement in lieu of further criminal proceedings in a case alleg-
10 ing a violation of such law, ordinance or resolution;

11 ~~(3) only convictions occurring in the immediately preceding five~~
12 ~~years, including prior to the effective date of this act, shall be taken into~~
13 ~~account, but the court may consider other prior convictions in determin-~~
14 ~~ing the sentence to be imposed within the limits provided for a first,~~
15 ~~second, third or subsequent offender, whichever is applicable; and any~~
16 ~~convictions occurring during a person’s lifetime shall be taken into ac-~~
17 ~~count when determining the sentence to be imposed for a first, second,~~
18 ~~third, fourth or subsequent offender;~~

19 (4) it is irrelevant whether an offense occurred before or after con-
20 viction for a previous offense; and

21 (5) *a person may enter into a diversion agreement in lieu of further*
22 *criminal proceedings for a violation of this section, and amendments*
23 *thereto, or an ordinance which prohibits the acts of this section, and*
24 *amendments thereto, only once during the person’s lifetime.*

25 ~~(m)~~ (m) Upon conviction of a person of a violation of this section or a
26 violation of a city ordinance or county resolution prohibiting the acts
27 prohibited by this section, the division, upon receiving a report of con-
28 viction, shall suspend, restrict or suspend and restrict the person’s driving
29 privileges as provided by K.S.A. 8-1014, and amendments thereto.

30 ~~(n)~~ (n) Nothing contained in this section shall be construed as pre-
31 venting any city from enacting ordinances, or any county from adopting
32 resolutions, declaring acts prohibited or made unlawful by this act as
33 unlawful or prohibited in such city or county and prescribing penalties
34 for violation thereof, but the minimum penalty prescribed by any such
35 ordinance or resolution shall not be less than the minimum penalty pre-
36 scribed by this act for the same violation, and the maximum penalty in
37 any such ordinance or resolution shall not exceed the maximum penalty
38 prescribed for the same violation. In addition, any such ordinance or
39 resolution shall authorize the court to order that the convicted person
40 pay restitution to any victim who suffered loss due to the violation for
41 which the person was convicted.

42 ~~(o)~~ (o) No plea bargaining agreement shall be entered into nor shall
43 any judge approve a plea bargaining agreement entered into for the pur-

1 pose of permitting a person charged with a violation of this section, or a
2 violation of any ordinance of a city or resolution of any county in this state
3 which prohibits the acts prohibited by this section, to avoid the mandatory
4 penalties established by this section or by the ordinance. For the purpose
5 of this subsection, entering into a diversion agreement pursuant to K.S.A.
6 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not
7 constitute plea bargaining.

8 ~~(p)~~ The alternatives set out in subsections (a)(1) ~~(2) and (3)~~, (a)(2)
9 and (a)(3) may be pleaded in the alternative, and the state, city or county,
10 but shall not be required to, may elect one or two of the three prior to
11 submission of the case to the fact finder.

12 ~~(q)~~ Upon a fourth or subsequent conviction, the judge of any court
13 in which any person is convicted of violating this section, may revoke the
14 person's license plate or temporary registration certificate of the motor
15 vehicle driven during the violation of this section for a period of one year.
16 Upon revoking any license plate or temporary registration certificate pur-
17 suant to this subsection, the court shall require that such license plate or
18 temporary registration certificate be surrendered to the court.

19 ~~(r)~~ For the purpose of this section: (1) "Alcohol concentration"
20 means the number of grams of alcohol per 100 milliliters of blood or per
21 210 liters of breath.

22 (2) "Imprisonment" shall include any restrained environment in
23 which the court and law enforcement agency intend to retain custody and
24 control of a defendant and such environment has been approved by the
25 board of county commissioners or the governing body of a city.

26 Sec. 9. K.S.A. 2000 Supp. 21-4704 is hereby amended to read as
27 follows: 21-4704. (a) For purposes of sentencing, the following sentencing
28 guidelines grid for nondrug crimes shall be applied in felony cases for
29 crimes committed on or after July 1, 1993:

30
31
32
33
34
35
36
37
38
39
40
41
42
43

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

1 (b) The provisions of this section shall be applicable to the sentencing
2 guidelines grid for nondrug crimes. Sentences expressed in such grid
3 represent months of imprisonment.

4 (c) The sentencing guidelines grid is a two-dimensional crime severity
5 and criminal history classification tool. The grid's vertical axis is the crime
6 severity scale which classifies current crimes of conviction. The grid's
7 horizontal axis is the criminal history scale which classifies criminal
8 histories.

9 (d) The sentencing guidelines grid for nondrug crimes as provided in
10 this section defines presumptive punishments for felony convictions, sub-
11 ject to judicial discretion to deviate for substantial and compelling reasons
12 and impose a different sentence in recognition of aggravating and miti-
13 gating factors as provided in this act. The appropriate punishment for a
14 felony conviction should depend on the severity of the crime of conviction
15 when compared to all other crimes and the offender's criminal history.

16 (e) (1) The sentencing court has discretion to sentence at any place
17 within the sentencing range. The sentencing judge shall select the center
18 of the range in the usual case and reserve the upper and lower limits for
19 aggravating and mitigating factors insufficient to warrant a departure.

20 (2) In presumptive imprisonment cases, the sentencing court shall
21 pronounce the complete sentence which shall include the prison sen-
22 tence, the maximum potential reduction to such sentence as a result of
23 good time and the period of postrelease supervision at the sentencing
24 hearing. Failure to pronounce the period of postrelease supervision shall
25 not negate the existence of such period of postrelease supervision.

26 (3) In presumptive nonprison cases, the sentencing court shall pro-
27 nounce the prison sentence as well as the duration of the nonprison sanc-
28 tion at the sentencing hearing.

29 (f) Each grid block states the presumptive sentencing range for an
30 offender whose crime of conviction and criminal history place such of-
31 fender in that grid block. If an offense is classified in a grid block below
32 the dispositional line, the presumptive disposition shall be nonimprison-
33 ment. If an offense is classified in a grid block above the dispositional
34 line, the presumptive disposition shall be imprisonment. If an offense is
35 classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional
36 nonprison sentence upon making the following findings on the record:

37 (1) An appropriate treatment program exists which is likely to be
38 more effective than the presumptive prison term in reducing the risk of
39 offender recidivism; and

40 (2) the recommended treatment program is available and the of-
41 fender can be admitted to such program within a reasonable period of
42 time; or

43 (3) the nonprison sanction will serve community safety interests by

1 promoting offender reformation.

2 Any decision made by the court regarding the imposition of an optional
3 nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or
4 6-G shall not be considered a departure and shall not be subject to appeal.

5 (g) The sentence for the violation of K.S.A. 21-3411, aggravated as-
6 sult against a law enforcement officer or K.S.A. 21-3415, aggravated
7 battery against a law enforcement officer and amendments thereto which
8 places the defendant's sentence in grid block 6-H or 6-I shall be pre-
9 sumed imprisonment. The court may impose an optional nonprison sen-
10 tence upon making a finding on the record that the nonprison sanction
11 will serve community safety interests by promoting offender reformation.
12 Any decision made by the court regarding the imposition of the optional
13 nonprison sentence, if the offense is classified in grid block 6-H or 6-I,
14 shall not be considered departure and shall not be subject to appeal.

15 (h) When a firearm is used to commit any person felony, the of-
16 fender's sentence shall be presumed imprisonment. The court may im-
17 pose an optional nonprison sentence upon making a finding on the record
18 that the nonprison sanction will serve community safety interests by pro-
19 moting offender reformation. Any decision made by the court regarding
20 the imposition of the optional nonprison sentence shall not be considered
21 a departure and shall not be subject to appeal.

22 (i) The sentence for the violation of the felony provision of *subsection*
23 *(f)* of K.S.A. 8-1567 and subsection (c)(3) of K.S.A. 21-3412 and amend-
24 ments thereto shall be as provided by the specific mandatory sentencing
25 requirements of that section and shall not be subject to the provisions of
26 this section or K.S.A. 21-4707 and amendments thereto. Notwithstanding
27 the provisions of any other section, the term of imprisonment imposed
28 for the violation of the felony provision of K.S.A. 8-1567 and subsection
29 (c)(3) of K.S.A. 21-3412 and amendments thereto shall not be served in
30 a state facility in the custody of the secretary of corrections. *The term of*
31 *imprisonment imposed for the fourth or subsequent violation of the felony*
32 *provision of K.S.A. 8-1567, and amendments thereto, shall be served in a*
33 *state facility in the custody of the secretary of corrections.*

34 (j) The sentence for any persistent sex offender whose current con-
35 victed crime carries a presumptive term of imprisonment shall be double
36 the maximum duration of the presumptive imprisonment term. The sen-
37 tence for any persistent sex offender whose current conviction carries a
38 presumptive nonprison term shall be presumed imprisonment and shall
39 be double the maximum duration of the presumptive imprisonment term.
40 Except as otherwise provided in this subsection, as used in this subsection,
41 "persistent sex offender" means a person who: (1) Has been convicted in
42 this state of a sexually violent crime, as defined in K.S.A. 22-3717 and
43 amendments thereto; and (2) at the time of the conviction under subsec-

1 tion (1) has at least one conviction for a sexually violent crime, as defined
2 in K.S.A. 22-3717 and amendments thereto in this state or comparable
3 felony under the laws of another state, the federal government or a for-
4 eign government. The provisions of this subsection shall not apply to any
5 person whose current convicted crime is a severity level 1 or 2 felony.

6 (k) If it is shown at sentencing that the offender committed any felony
7 violation for the benefit of, at the direction of, or in association with any
8 criminal street gang, with the specific intent to promote, further or assist
9 in any criminal conduct by gang members, the offender's sentence shall
10 be presumed imprisonment. Any decision made by the court regarding
11 the imposition of the optional nonprison sentence shall not be considered
12 a departure and shall not be subject to appeal. As used in this subsection,
13 "criminal street gang" means any organization, association or group of
14 three or more persons, whether formal or informal, having as one of its
15 primary activities the commission of one or more person felonies or felony
16 violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*,
17 and amendments thereto, which has a common name or common iden-
18 tifying sign or symbol, whose members, individually or collectively engage
19 in or have engaged in the commission, attempted commission, conspiracy
20 to commit or solicitation of two or more person felonies or felony viola-
21 tions of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and
22 amendments thereto, or any substantially similar offense from another
23 jurisdiction.

24 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715
25 and amendments thereto when such person being sentenced has a prior
26 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-
27 3716 and amendments thereto shall be presumed imprisonment.

28 Sec. 10. K.S.A. 2000 Supp. 22-3717 is hereby amended to read as
29 follows: 22-3717. (a) Except as otherwise provided by this section, K.S.A.
30 1993 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-
31 4638 and amendments thereto, *and K.S.A. 8-1567, and amendments*
32 *thereto*, an inmate, including an inmate sentenced pursuant to K.S.A. 21-
33 4618 and amendments thereto, shall be eligible for parole after serving
34 the entire minimum sentence imposed by the court, less good time
35 credits.

36 (b) (1) Except as provided by K.S.A. 21-4635 through 21-4638 and
37 amendments thereto, an inmate sentenced to imprisonment for the crime
38 of capital murder, or an inmate sentenced for the crime of murder in the
39 first degree based upon a finding of premeditated murder, committed on
40 or after July 1, 1994, shall be eligible for parole after serving 25 years of
41 confinement, without deduction of any good time credits.

42 (2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993
43 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638,

1 and amendments thereto, an inmate sentenced to imprisonment for an
2 off-grid offense committed on or after July 1, 1993, but prior to July 1,
3 1999, shall be eligible for parole after serving 15 years of confinement,
4 without deduction of any good time credits and an inmate sentenced to
5 imprisonment for an off-grid offense committed on or after July 1, 1999,
6 shall be eligible for parole after serving 20 years of confinement without
7 deduction of any good time credits.

8 (3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its
9 repeal, an inmate sentenced for a class A felony committed before July
10 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618 and
11 amendments thereto, shall be eligible for parole after serving 15 years of
12 confinement, without deduction of any good time credits.

13 (4) An inmate sentenced to imprisonment for a violation of subsec-
14 tion (a) of K.S.A. 21-3402 and amendments thereto committed on or after
15 July 1, 1996, but prior to July 1, 1999, shall be eligible for parole after
16 serving 10 years of confinement without deduction of any good time
17 credits.

18 (c) Except as provided in subsection (e), if an inmate is sentenced to
19 imprisonment for more than one crime and the sentences run consec-
20 utively, the inmate shall be eligible for parole after serving the total of:

21 (1) The aggregate minimum sentences, as determined pursuant to
22 K.S.A. 21-4608 and amendments thereto, less good time credits for those
23 crimes which are not class A felonies; and

24 (2) an additional 15 years, without deduction of good time credits,
25 for each crime which is a class A felony.

26 (d) (1) Persons sentenced for crimes, other than off-grid crimes,
27 committed on or after July 1, 1993, will not be eligible for parole, but will
28 be released to a mandatory period of postrelease supervision upon com-
29 pletion of the prison portion of their sentence as follows:

30 (A) Except as provided in subparagraphs (D) and (E), persons sen-
31 tenced for nondrug severity level 1 through 4 crimes and drug severity
32 levels 1 and 2 crimes must serve 36 months, plus the amount of good
33 time earned and retained pursuant to K.S.A. 21-4722 and amendments
34 thereto, on postrelease supervision.

35 (B) Except as provided in subparagraphs (D) and (E), persons sen-
36 tenced for nondrug severity levels 5 and 6 crimes and drug severity level
37 3 crimes must serve 24 months, plus the amount of good time earned
38 and retained pursuant to K.S.A. 21-4722, and amendments thereto, on
39 postrelease supervision.

40 (C) Except as provided in subparagraphs (D) and (E), persons sen-
41 tenced for nondrug severity level 7 through 10 crimes and drug severity
42 level 4 crimes must serve 12 months, plus the amount of good time earned
43 and retained pursuant to K.S.A. 21-4722 and amendments thereto, on

1 postrelease supervision.

2 (D) (i) The sentencing judge shall impose the postrelease supervi-
3 sion period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C),
4 unless the judge finds substantial and compelling reasons to impose a
5 departure based upon a finding that the current crime of conviction was
6 sexually violent or sexually motivated. In that event, departure may be
7 imposed to extend the postrelease supervision to a period of up to 60
8 months.

9 (ii) If the sentencing judge departs from the presumptive postrelease
10 supervision period, the judge shall state on the record at the time of
11 sentencing the substantial and compelling reasons for the departure. De-
12 partures in this section are subject to appeal pursuant to K.S.A. 21-4721
13 and amendments thereto.

14 (iii) In determining whether substantial and compelling reasons exist,
15 the court shall consider:

16 (a) Written briefs or oral arguments submitted by either the defend-
17 ant or the state;

18 (b) any evidence received during the proceeding;

19 (c) the presentence report, the victim's impact statement and any
20 psychological evaluation as ordered by the court pursuant to subsection
21 (e) of K.S.A. 21-4714 and amendments thereto; and

22 (d) any other evidence the court finds trustworthy and reliable.

23 (iv) The sentencing judge may order that a psychological evaluation
24 be prepared and the recommended programming be completed by the
25 offender. The department of corrections or the parole board shall ensure
26 that court ordered sex offender treatment be carried out.

27 (v) In carrying out the provisions of subparagraph (d)(1)(D), the court
28 shall refer to K.S.A. 21-4718 and amendments thereto.

29 (vi) Upon petition, the parole board may provide for early discharge
30 from the postrelease supervision period upon completion of court or-
31 dered programs and completion of the presumptive postrelease super-
32 vision period, as determined by the crime of conviction, pursuant to sub-
33 paragraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from
34 postrelease supervision is at the discretion of the parole board.

35 (vii) Persons convicted of crimes deemed sexually violent or sexually
36 motivated, shall be registered according to the habitual sex offender reg-
37 istration act, K.S.A. 22-4901 through 22-4910 and amendments thereto.

38 (E) The period of postrelease supervision provided in subparagraphs
39 (A) and (B) may be reduced by up to 12 months and the period of post-
40 release supervision provided in subparagraph (C) may be reduced by
41 up to six months based on the offender's compliance with conditions of
42 supervision and overall performance while on postrelease supervision.
43 The reduction in the supervision period shall be on an earned basis pur-

1 suant to rules and regulations adopted by the secretary of corrections.

2 (F) In cases where sentences for crimes from more than one severity
3 level have been imposed, the offender shall serve the longest period of
4 postrelease supervision as provided by this section available for any crime
5 upon which sentence was imposed irrespective of the severity level of the
6 crime. Supervision periods will not aggregate.

7 (2) As used in this section, “sexually violent crime” means:

8 (A) Rape, K.S.A. 21-3502, and amendments thereto;

9 (B) indecent liberties with a child, K.S.A. 21-3503, and amendments
10 thereto;

11 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, and
12 amendments thereto;

13 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505
14 and amendments thereto;

15 (E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments
16 thereto;

17 (F) indecent solicitation of a child, K.S.A. 21-3510, and amendments
18 thereto;

19 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and
20 amendments thereto;

21 (H) sexual exploitation of a child, K.S.A. 21-3516, and amendments
22 thereto;

23 (I) aggravated sexual battery, K.S.A. 21-3518, and amendments
24 thereto;

25 (J) any conviction for a felony offense in effect at any time prior to
26 the effective date of this act, that is comparable to a sexually violent crime
27 as defined in subparagraphs (A) through (I), or any federal or other state
28 conviction for a felony offense that under the laws of this state would be
29 a sexually violent crime as defined in this section;

30 (K) an attempt, conspiracy or criminal solicitation, as defined in
31 K.S.A. 21-3301, 21-3302, 21-3303, and amendments thereto, of a sexually
32 violent crime as defined in this section; or

33 (L) any act which at the time of sentencing for the offense has been
34 determined beyond a reasonable doubt to have been sexually motivated.
35 As used in this subparagraph, “sexually motivated” means that one of the
36 purposes for which the defendant committed the crime was for the pur-
37 pose of the defendant’s sexual gratification.

38 (e) If an inmate is sentenced to imprisonment for a crime committed
39 while on parole or conditional release, the inmate shall be eligible for
40 parole as provided by subsection (c), except that the Kansas parole board
41 may postpone the inmate’s parole eligibility date by assessing a penalty
42 not exceeding the period of time which could have been assessed if the
43 inmate’s parole or conditional release had been violated for reasons other

1 than conviction of a crime.

2 (f) If a person is sentenced to prison for a crime committed on or
3 after July 1, 1993, while on probation, parole, conditional release or in a
4 community corrections program, for a crime committed prior to July 1,
5 1993, and the person is not eligible for retroactive application of the
6 sentencing guidelines and amendments thereto pursuant to K.S.A. 21-
7 4724 and amendments thereto, the new sentence shall not be aggregated
8 with the old sentence, but shall begin when the person is paroled or
9 reaches the conditional release date on the old sentence. If the offender
10 was past the offender's conditional release date at the time the new of-
11 fense was committed, the new sentence shall not be aggregated with the
12 old sentence but shall begin when the person is ordered released by the
13 Kansas parole board or reaches the maximum sentence expiration date
14 on the old sentence, whichever is earlier. The new sentence shall then
15 be served as otherwise provided by law. The period of postrelease su-
16 pervision shall be based on the new sentence, except that those offenders
17 whose old sentence is a term of imprisonment for life, imposed pursuant
18 to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate
19 sentence with a maximum term of life imprisonment, for which there is
20 no conditional release or maximum sentence expiration date, shall remain
21 on postrelease supervision for life or until discharged from supervision
22 by the Kansas parole board.

23 (g) Subject to the provisions of this section, the Kansas parole board
24 may release on parole those persons confined in institutions who are el-
25 igible for parole when: (1) The board believes that the inmate should be
26 released for hospitalization, for deportation or to answer the warrant or
27 other process of a court and is of the opinion that there is reasonable
28 probability that the inmate can be released without detriment to the com-
29 munity or to the inmate; or (2) the secretary of corrections has reported
30 to the board in writing that the inmate has satisfactorily completed the
31 programs required by any agreement entered under K.S.A. 75-5210a and
32 amendments thereto, or any revision of such agreement, and the board
33 believes that the inmate is able and willing to fulfill the obligations of a
34 law abiding citizen and is of the opinion that there is reasonable proba-
35 bility that the inmate can be released without detriment to the community
36 or to the inmate. Parole shall not be granted as an award of clemency and
37 shall not be considered a reduction of sentence or a pardon.

38 (h) The Kansas parole board shall hold a parole hearing at least the
39 month prior to the month an inmate will be eligible for parole under
40 subsections (a), (b) and (c). At least the month preceding the parole hear-
41 ing, the county or district attorney of the county where the inmate was
42 convicted shall give written notice of the time and place of the public
43 comment sessions for the inmate to any victim of the inmate's crime who

1 is alive and whose address is known to the county or district attorney or,
2 if the victim is deceased, to the victim's family if the family's address is
3 known to the county or district attorney. Except as otherwise provided,
4 failure to notify pursuant to this section shall not be a reason to postpone
5 a parole hearing. In the case of any inmate convicted of a class A felony
6 the secretary of corrections shall give written notice of the time and place
7 of the public comment session for such inmate at least one month pre-
8 ceding the public comment session to any victim of such inmate's crime
9 or the victim's family pursuant to K.S.A. 74-7338 and amendments
10 thereto. If notification is not given to such victim or such victim's family
11 in the case of any inmate convicted of a class A felony, the board shall
12 postpone a decision on parole of the inmate to a time at least 30 days
13 after notification is given as provided in this section. Nothing in this sec-
14 tion shall create a cause of action against the state or an employee of the
15 state acting within the scope of the employee's employment as a result
16 of the failure to notify pursuant to this section. If granted parole, the
17 inmate may be released on parole on the date specified by the board, but
18 not earlier than the date the inmate is eligible for parole under subsec-
19 tions (a), (b) and (c). At each parole hearing and, if parole is not granted,
20 at such intervals thereafter as it determines appropriate, the Kansas parole
21 board shall consider: (1) Whether the inmate has satisfactorily completed
22 the programs required by any agreement entered under K.S.A. 75-5210a
23 and amendments thereto, or any revision of such agreement; and (2) all
24 pertinent information regarding such inmate, including, but not limited to,
25 to, the circumstances of the offense of the inmate; the presentence report;
26 the previous social history and criminal record of the inmate; the conduct,
27 employment, and attitude of the inmate in prison; the reports of such
28 physical and mental examinations as have been made; comments of the
29 victim and the victim's family; comments of the public; official comments;
30 and capacity of state correctional institutions.

31 (i) In those cases involving inmates sentenced for a crime committed
32 after July 1, 1993, the parole board will review the inmates proposed
33 release plan. The board may schedule a hearing if they desire. The board
34 may impose any condition they deem necessary to insure public safety,
35 aid in the reintegration of the inmate into the community, or items not
36 completed under the agreement entered into under K.S.A. 75-5210a and
37 amendments thereto. The board may not advance or delay an inmate's
38 release date. Every inmate while on postrelease supervision shall remain
39 in the legal custody of the secretary of corrections and is subject to the
40 orders of the secretary.

41 (j) Before ordering the parole of any inmate, the Kansas parole board
42 shall have the inmate appear before either in person or via a video con-
43 ferencing format and shall interview the inmate unless impractical be-

1 cause of the inmate's physical or mental condition or absence from the
2 institution. Every inmate while on parole shall remain in the legal custody
3 of the secretary of corrections and is subject to the orders of the secretary.
4 Whenever the Kansas parole board formally considers placing an inmate
5 on parole and no agreement has been entered into with the inmate under
6 K.S.A. 75-5210a and amendments thereto, the board shall notify the in-
7 mate in writing of the reasons for not granting parole. If an agreement
8 has been entered under K.S.A. 75-5210a and amendments thereto and
9 the inmate has not satisfactorily completed the programs specified in the
10 agreement, or any revision of such agreement, the board shall notify the
11 inmate in writing of the specific programs the inmate must satisfactorily
12 complete before parole will be granted. If parole is not granted only
13 because of a failure to satisfactorily complete such programs, the board
14 shall grant parole upon the secretary's certification that the inmate has
15 successfully completed such programs. If an agreement has been entered
16 under K.S.A. 75-5210a and amendments thereto and the secretary of
17 corrections has reported to the board in writing that the inmate has sat-
18 isfactorily completed the programs required by such agreement, or any
19 revision thereof, the board shall not require further program participa-
20 tion. However, if the board determines that other pertinent information
21 regarding the inmate warrants the inmate's not being released on parole,
22 the board shall state in writing the reasons for not granting the parole. If
23 parole is denied for an inmate sentenced for a crime other than a class A
24 or class B felony or an off-grid felony, the board shall hold another parole
25 hearing for the inmate not later than one year after the denial unless the
26 parole board finds that it is not reasonable to expect that parole would
27 be granted at a hearing if held in the next three years or during the interim
28 period of a deferral. In such case, the parole board may defer subsequent
29 parole hearings for up to three years but any such deferral by the board
30 shall require the board to state the basis for its findings. If parole is denied
31 for an inmate sentenced for a class A or class B felony or an off-grid
32 felony, the board shall hold another parole hearing for the inmate not
33 later than three years after the denial unless the parole board finds that
34 it is not reasonable to expect that parole would be granted at a hearing if
35 held in the next 10 years or during the interim period of a deferral. In
36 such case, the parole board may defer subsequent parole hearings for up
37 to 10 years but any such deferral shall require the board to state the basis
38 for its findings.

39 (k) Parolees and persons on postrelease supervision shall be assigned,
40 upon release, to the appropriate level of supervision pursuant to the cri-
41 teria established by the secretary of corrections.

42 (l) The Kansas parole board shall adopt rules and regulations in ac-
43 cordance with K.S.A. 77-415 *et seq.*, and amendments thereto, not in-

1 consistent with the law and as it may deem proper or necessary, with
2 respect to the conduct of parole hearings, postrelease supervision reviews,
3 revocation hearings, orders of restitution, reimbursement of expenditures
4 by the state board of indigents' defense services and other conditions to
5 be imposed upon parolees or releasees. Whenever an order for parole or
6 postrelease supervision is issued it shall recite the conditions thereof.

7 (m) Whenever the Kansas parole board orders the parole of an in-
8 mate or establishes conditions for an inmate placed on postrelease su-
9 pervision, the board:

10 (1) Unless it finds compelling circumstances which would render a
11 plan of payment unworkable, shall order as a condition of parole or post-
12 release supervision that the parolee or the person on postrelease super-
13 vision pay any transportation expenses resulting from returning the pa-
14 rolee or the person on postrelease supervision to this state to answer
15 criminal charges or a warrant for a violation of a condition of probation,
16 assignment to a community correctional services program, parole, con-
17 ditional release or postrelease supervision;

18 (2) to the extent practicable, shall order as a condition of parole or
19 postrelease supervision that the parolee or the person on postrelease su-
20 pervision make progress towards or successfully complete the equivalent
21 of a secondary education if the inmate has not previously completed such
22 educational equivalent and is capable of doing so;

23 (3) may order that the parolee or person on postrelease supervision
24 perform community or public service work for local governmental agen-
25 cies, private corporations organized not-for-profit or charitable or social
26 service organizations performing services for the community;

27 (4) may order the parolee or person on postrelease supervision to pay
28 the administrative fee imposed pursuant to K.S.A. 2000 Supp. 22-4529,
29 *and amendments thereto*, unless the board finds compelling circum-
30 stances which would render payment unworkable; and

31 (5) unless it finds compelling circumstances which would render a
32 plan of payment unworkable, shall order that the parolee or person on
33 postrelease supervision reimburse the state for all or part of the expend-
34 itures by the state board of indigents' defense services to provide counsel
35 and other defense services to the person. In determining the amount and
36 method of payment of such sum, the parole board shall take account of
37 the financial resources of the person and the nature of the burden that
38 the payment of such sum will impose. Such amount shall not exceed the
39 amount claimed by appointed counsel on the payment voucher for indi-
40 gents' defense services or the amount prescribed by the board of indi-
41 gents' defense services reimbursement tables as provided in K.S.A. 22-
42 4522 and amendments thereto, whichever is less, minus any previous
43 payments for such services.

1 (n) If the court which sentenced an inmate specified at the time of
2 sentencing the amount and the recipient of any restitution ordered as a
3 condition of parole or postrelease supervision, the Kansas parole board
4 shall order as a condition of parole or postrelease supervision that the
5 inmate pay restitution in the amount and manner provided in the journal
6 entry unless the board finds compelling circumstances which would render
7 a plan of restitution unworkable.

8 (o) Whenever the Kansas parole board grants the parole of an inmate,
9 the board, within 10 days of the date of the decision to grant parole, shall
10 give written notice of the decision to the county or district attorney of the
11 county where the inmate was sentenced.

12 (p) When an inmate is to be released on postrelease supervision, the
13 secretary, within 30 days prior to release, shall provide the county or
14 district attorney of the county where the inmate was sentenced written
15 notice of the release date.

16 (q) Inmates shall be released on postrelease supervision upon the
17 termination of the prison portion of their sentence. Time served while
18 on postrelease supervision will vest.

19 (r) An inmate who is allocated regular good time credits as provided
20 in K.S.A. 22-3725 and amendments thereto may receive meritorious good
21 time credits in increments of not more than 90 days per meritorious act.
22 These credits may be awarded by the secretary of corrections when an
23 inmate has acted in a heroic or outstanding manner in coming to the
24 assistance of another person in a life threatening situation, preventing
25 injury or death to a person, preventing the destruction of property or
26 taking actions which result in a financial savings to the state.

27 (s) The provisions of subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and
28 (d)(1)(E) shall be applied retroactively as provided in subsection (t).

29 (t) For offenders sentenced prior to the effective date of this act who
30 are eligible for modification of their postrelease supervision obligation,
31 the department of corrections shall modify the period of postrelease su-
32 pervision as provided for by this section for offenders convicted of severity
33 level 9 and 10 crimes on the sentencing guidelines grid for nondrug
34 crimes and severity level 4 crimes on the sentencing guidelines grid for
35 drug crimes on or before September 1, 2000; for offenders convicted of
36 severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug
37 crimes on or before November 1, 2000; and for offenders convicted of
38 severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug
39 crimes and severity level 3 crimes on the sentencing guidelines grid for
40 drug crimes on or before January 1, 2001.

41 Sec. 11. K.S.A. 2000 Supp. 65-1,107 is hereby amended to read as
42 follows: 65-1,107. The secretary of health and environment may adopt
43 rules and regulations establishing:

1 (a) The procedures, *testing protocols* and qualifications of authorized
2 personnel, instruments and methods used in laboratories performing tests
3 for the presence of controlled substances included in schedule I or II of
4 the uniform controlled substances act or metabolites thereof;

5 (b) the procedures, *testing protocols*, qualifications of personnel and
6 standards of performance in the testing of human breath for law enforce-
7 ment purposes, including procedures for the periodic inspection of ap-
8 paratus, equipment and devices, other than preliminary screening de-
9 vices, approved by the secretary of health and environment for the testing
10 of human breath for law enforcement purposes;

11 (c) the requirements for the training, certification and periodic test-
12 ing of persons who operate apparatus, equipment or devices, other than
13 preliminary screening devices, for the testing of human breath for law
14 enforcement purposes;

15 (d) criteria for preliminary screening devices for testing of breath for
16 law enforcement purposes, based on health and performance considera-
17 tions; and

18 (e) a list of preliminary screening devices which are approved for
19 testing of breath for law enforcement purposes and which law enforce-
20 ment agencies may purchase and train officers to use as aids in deter-
21 mining probable cause to arrest and grounds for requiring testing pur-
22 suant to K.S.A. 8-1001 and amendments thereto.

23 Sec. 12. K.S.A. 8-2,145 and K.S.A. 2000 Supp. 8-241, 8-1001, 8-
24 1002, 8-1014, 8-1567, 21-4704, 22-3717 and 65-1,107 are hereby
25 repealed.

26 Sec. 13. This act shall take effect and be in force from and after its
27 publication in the statute book.

28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43